

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EZEKIEL KOLLAR,
KEITH HAYWOOD,

Plaintiffs,

Hon. Hugh B. Scott

07CV130

v.

Order

CONAGRA FOODS,
SEDER FOODS,

Defendants.

Before the Court is defendant ConAgra Foods, Inc.'s, motion for a stay pending action by the Judicial Panel on Multidistrict Litigation ("JPML") (Docket No. 10) for possible consideration with the scores of other pending actions against ConAgra Foods ("ConAgra") arising from the recall of Peter Pan peanut butter in February 2007 (see id. Def. Motion at 2-3). As previously noted (see Docket No. 12), this motion is similar to the motion made by ConAgra in Avalone v. ConAgra, No. 07CV6084, Docket No. 4, now pending before Magistrate Judge Payson. The briefing for motion in the Kollar and Haywood action was to be parallel with the Avalone motion, so that this Court would be consistent in handling these motions. But plaintiffs in Avalone opposed the motion for a stay (Avalone, supra, Docket No. 7) and the Court adjourned oral argument (Text Notice, June 6, 2007).

In the Kollar and Haywood action, responses to the motion for a stay were due by May 31, 2007, a reply due by June 14, 2007, and the motion submitted on June 19, 2007 (Docket

No. 12), with the intention to consider the motion submitted after argument of the Avalone motion (id.). Plaintiff Haywood filed a response (Docket No. 14¹) and indicated that he would accept a partial stay of the action, with the Court “leaving open the door for telephone conference[s] [sic] pertaining to the possibility of resolving this matter prior to any MDL determination” (id. Haywood Affirm. ¶ 6, emphasis in original). ConAgra’s counsel wrote to the Court declining to file a reply and asking that the motion be considered submitted as of May 31, 2007 (see Docket No. 17, Order at 1, 2; letter to Chambers, May 30, 2007). ConAgra noted that plaintiffs have not raised substantial opposition to its motion (letter to Chambers, May 30, 2007).

The Court initially declined ConAgra’s request to deem the motion submitted prior to June 19, 2007 (Docket No. 17), but this decision was based upon argument of the Avalone motion. With Magistrate Judge Payson adjourning oral argument in Avalone of ConAgra’s opposed motion for a stay and plaintiffs’ lack of opposition in Kollar and Haywood, this Court will now deem ConAgra’s motion here submitted. As ConAgra notes, other courts with similar tainted peanut butter cases pending have granted stays while awaiting action by JPML (see Docket No. 10, Def. Motion at 8-9). The purpose of the stay is to forestall discovery pending JPML action on the pending application to transfer cases to a JPML court. ConAgra is silent as to this Court retaining jurisdiction for settlement purposes, as sought by plaintiff Haywood.

Since no Scheduling Order is in place and thus no deadlines for discovery have been set yet, a stay pending determination of the multidistrict litigation issue would not prejudice the parties here. Defendant ConAgra’s motion for a stay (Docket No. 10) is **granted**. While the

¹Plaintiff Kollar, in a separate facility from Haywood, has not responded to this motion, see Docket No. 17.

application is pending this Court retains jurisdiction, see Multidistrict Litig. R. 1.5, and, if the parties deem it appropriate, will convene a settlement or status conference in this matter.

So Ordered.

/s/ Hugh B. Scott
Honorable Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
June 18, 2007